No. 857

In the Supreme Court of the United States

OCTOBER TERM, 1960

MAC T. HALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. A, pp. 14–23) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 23, 1960 (Pet. App. B, p. 24). A petition for rehearing was denied on January 31, 1961 (Pet. App. C, p. 25). On March 2, 1961, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including April 1, 1961. The petition for a writ of certiorari was filed on March 30, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to show criminal intent to misapply funds of a bank, in violation of 18 U.S.C. 656.

STATUTES INVOLVED

18 U.S.C. 1005 provides in pertinent part:

* * * * *

> Whoever makes any false entry in any book, report, or statement of such bank with intent to injure or defraud such bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, or the Board of Governors of the Federal Reserve System—
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

* * * * *

18 U.S.C. 656 provides in pertinent part:

> Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities intrusted to the custody or care of such bank, or to the custody or care of any such agent, officer, director, em-

ployee or receiver, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

18 U.S.C. 2(a) provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

* * * * *

STATEMENT

In the United States District Court for the Northern District of Texas, petitioner was charged, in four counts of a seventeen-count indictment, with unlawfully aiding and abetting a bank employee (1) to make a false entry in bank books, in violation of 18 U.S.C. 1005 (Count 1) and (2) wilfully to misapply bank moneys to petitioner's use by causing the bank to pay drafts signed by petitioner, in violation of 18 U.S.C. 656 (Counts 10, 11, 12) (R. 3–32). After severance and waiver of trial by jury (R. 33), petitioner was found guilty by the court on all four counts (R. 105). He was sentenced to a general term of imprisonment of two years (R. 106).

The facts developed at trial are as follows:

On October 12, 1959, records of the Dallas First National Bank inaccurately listed its cash item assets as amounting to $5,606,872.52, a sum understated by $290,320.03. Of this shortage, $4,360.13 was traced to 154 drafts signed by petitioner and drawn on the Midwest Refining Company, a concern which petitioner was organizing (R. 35–38).

The drafts had been accepted into the bank's collection department by its officer in charge, James Cook Evans, who was a close business associate of petitioner.[1] The drafts were treated as cash items despite the fact that payment for them had not been received prior to acceptance or within twenty-four hours thereafter (R. 43, 45). Evans had balanced the drafts in bank records, by depositing an undated trust receipt in the amount of $4,360.13, bearing the notation "Midwest Refining Company, M. T. Hall" (R. 37, 57, 65).

From July 1959 to October 1959, the drafts were accumulated by Evans in his desk drawer (R. 65). Evans testified that petitioner had asked him to take care of the drafts until petitioner returned from a business trip, that as the drafts accumulated in his drawer Evans made out new trust receipts to correspond with the amount of accumulation, and that he had strongly urged petitioner to pay the accumulation and mentioned that he would probably lose his job if the facts were known (R. 63–64).

There was also evidence that Evans had previously, in similar fashion, taken care of drafts for petitioner in substantial sums for extended periods of time without charging interest (R. 90). Petitioner had designated Evans as the beneficiary on a life insurance policy, telling Evans that this would take care of pos-

[1] The evidence showed that Evans was a director of Midwest Refining Company and that he received stock certificates of the company in the value of $1,000 for which he paid $1,300 and for which petitioner never demanded further payment (R. 66–71, 91–92). Petitioner had given to Evans, without charge, oil and gas leases thought to be of value at the time of assignment, although later proved worthless (R. 71–72, 93).

sible outstanding drafts if anything happened to petitioner (R. 72-73).

ARGUMENT

The sole question in this case is whether the evidence was sufficient to show intent to commit the crimes charged.

1. As the opinion below notes (Pet. App. A, pp. 21-23), both the district court and the court of appeals had initial doubts whether, to make out a case of wilful misapplication, the government had to show intent to deprive the bank permanently of its funds or whether it was enough for the government to show intent to manipulate bank funds for a temporary period. The courts below ultimately decided that the latter interpretation of 18 U.S.C. 656 was the proper one. In this, they were correct. Wilful misapplication as used in 18 U.S.C. 656 has no settled technical meaning. See *Batchelor* v. *United States*, 156 U.S. 426. The offense is committed when there is a knowing conversion of funds or credits to one's own use, or the use of another, with the intent to injure or defraud the bank. *United States* v. *Britton*, 107 U.S. 655, 668. The intent to injure need not be malicious (*Logsdon* v. *United States*, 253 F. 2d 12 (C.A. 6)); nor need the injury or loss be shown to be a final permanent one, for a temporary loss is sufficient. The fact, therefore, that petitioner intended ultimately to repair the loss is of no import. See *Rakes* v. *United States*, 169 F. 2d 739 (C.A. 4), certiorari denied, 335 U.S. 826; *United States* v. *Nystrom*, 116 F. Supp. 771 (W.D. Pa.), affirmed, 237 F. 2d 218 (C.A. 3).

2. Having decided that, for purposes of 18 U.S.C. 656, the government had to prove intent to manipulate funds for only a temporary period, the courts below had no difficulty in finding that the evidence established the offense. The evidence fully justified the conclusion that Evans, a banker of 34 years' experience, knew that he was improperly using the funds of the bank when he held the drafts at petitioner's request without collecting the proceeds over a long period of time,[2] and that petitioner knew that what he had Evans do was wrong. Evans told petitioner that he would probably lose his job if the practice were discovered, and petitioner, by his insurance policy, endeavored to protect Evans.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1961.

[2] The Court of Appeals reversed the conviction of one Edwards at a separate trial because the trial judge erroneously instructed the jury that Evans had admitted guilt. (Pet. App. D, pp. 26-29). It did not hold that the jury could not have found that Evans did not have the intent to misapply funds; to the contrary, it said that there was "strong evidence of guilt." There is thus no conflict with the decision below.

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